

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Charles Anthony Barbettini, Jr., Debtor)
)

Case No. 17-31129-KLP
Chapter 13

MOTION TO DISMISS CASE WITH PREJUDICE

COMES NOW Suzanne E. Wade, Chapter 13 Trustee, and moves this Court to dismiss the case of Charles Anthony Barbettini, Jr., (the “Debtor”), with prejudice and a prohibition from re-filing a bankruptcy case under any chapter of the Bankruptcy Code, in any jurisdiction in the United States, for a period of at least two (2) years; and in support thereof states as follows:

Parties

1. Charles Anthony Barbettini, Jr., is not represented by counsel in this case.
2. On or about March 7, 2017, Suzanne E. Wade was appointed Chapter 13 trustee in this case. She continues to serve as the Chapter 13 Trustee in this case.

Jurisdiction and Venue

3. This motion is commenced pursuant to Rule 9013 of the Federal Rules of Bankruptcy Procedure.
4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 105 and 1307(c). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (J).
5. This Motion is brought by the Trustee in furtherance of her duties as set forth in 11 U.S.C. § 1302(b), and is filed for the specific purpose of having the dismissal of this case be with prejudice with a prohibition from re-filing any bankruptcy case under any chapter of the Bankruptcy Code in any jurisdiction of the United States for a period of at least two (2) years.

Background

6. On or about March 7, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), designated as Case Number 17-31129-KLP (the “Current Case”).
7. Prior to the Current Case, the Debtor has filed four other Chapter 13 cases, all of which have been dismissed. The cases can be summarized as follows:
 - a. The first case was filed on November 9, 2011, and was dismissed by Order entered October 12, 2012, for default in making the payments under the Plan (Case No. 11-37134-DOT).

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- b. The second case, filed January 7, 2014, under the name Charles Anthony Barbettini, was dismissed by Order entered February 4, 2014 for failure to cure credit counseling deficiency (Case No. 14-30052-KLP).
 - c. The third case, filed September 24, 2014, under the name Charles Anthony Barbettini, was dismissed by Order entered on May 22, 2015, for failure to file an amended plan upon denial of confirmation (Case No. 14-35128-KRH).
 - d. The fourth case, filed October 25, 2016, was dismissed by Order entered November 16, 2016 for failure to pay installment of filing fee (Case No. 16-35239-KLP).
8. On March 22, 2017, the Debtor filed an incomplete Plan as there are no provisions for funding of the Plan; and no provision to pay unsecured creditors addressed in the Plan. In addition, the Debtor has failed to commence payments under the Plan, as required by § 1326 of the Bankruptcy Code 11 U.S.C. §1326 (a)(1). Furthermore, the Debtor has failed to provide proof of his household income to ensure the Plan's compliance with the requirements of 11 U.S.C. § 1325(b)(1)(B) and 11 U.S.C. § 1322(a)(1) and § 1322(d)(1). Finally, the Debtor has failed to provide proof of filing all required tax returns pursuant to 11 U.S.C. §1308 and §1325(a)(9).
9. The Debtor has failed to proceed in good faith.

Argument

- 10. 11 U.S.C. § 105 provides, in pertinent part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a) (2016).
- 11. 11 U.S.C. § 1307 provides that the Court may dismiss a case for cause, including unreasonable delay that is prejudicial to creditors.
- 12. The Debtor’s failure to commence payments under the Plan constitutes a breach of his statutory duties under 11 U.S.C. §1326(a)(1) and is cause for dismissal pursuant to 11 U.S.C. § 1307(c)(4).
- 13. His failure to file a completed Chapter 13 plan is cause for dismissal under 11 U.S.C. § 1307(c)(1).
- 14. In addition, the Trustee would suggest the Debtor’s history of repetitive bankruptcy filings demonstrates a lack of good faith, and is prejudicial to creditors.
- 15. Therefore, dismissal is appropriate pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

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16. In addition to dismissal, the Trustee seeks an order preventing the Debtor from filing another bankruptcy case for a period of at least two (2) years.

WHEREFORE, the Chapter 13 Trustee, by counsel, respectfully requests the Court dismiss this case with prejudice against the Debtor filing any other bankruptcy case in any jurisdiction in the United States under any chapter of the Bankruptcy Code for a period of at least two (2) years from the entry of this Order on the Court's docket, and grant any other and further relief which the Court deems equitable and just.

Respectfully submitted,

Date: May 12, 2017

/s/ Suzanne E. Wade

Chapter 13 Trustee

CERTIFICATE OF SERVICE

I hereby certify a true copy of the foregoing MOTION TO DISMISS CASE WITH PREJUDICE was served electronically or by first-class mail, postage prepaid, this 12th day of May, 2017, upon the following parties:

Charles Anthony Barbettini, Jr., PRO SE Debtor
7812 Little Ridge ct
Chesterfield, VA 23832

Kevin Hildebeidel
Stern & Eisenberg Mid-Atlantic, PC
9411 Philadelphia Road
Suite M
Baltimore, MD 21237

R.A. Hurley
Shapiro & Brown, LLP
501 Independence Parkway, Suite 203
Chesapeake, VA 23320

/s/ Suzanne E. Wade
Chapter 13 Trustee

Suzanne E. Wade, Chapter 13 Trustee
Virginia State Bar Number 31868
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Charles Anthony Barbettini, Jr., Debtor)	Case No. 17-31129-KLP
)	Chapter 13
7812 Little Ridge ct)	
Chesterfield, VA 23832)	
)	
XXX-XX -1313)	

NOTICE OF MOTION TO DISMISS CASE WITH PREJUDICE, AND HEARING THEREON

Suzanne E. Wade, Chapter 13 Trustee, has filed with the Court a Motion to Dismiss Case With Prejudice (the “Motion”) in the above-captioned case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then on or before June 14, 2017, you or your attorney must:

(X)File with the Court, at the address shown below, a written response pursuant to Local Bankruptcy Rule 9013-1(H). If you mail your response to the Court for filing, you must mail it early enough that the Court will **receive** it on or before the date stated above.

Clerk of Court
United States Bankruptcy Court
701 East Broad Street, Suite 4000
Richmond, Virginia 23219

You must also mail a copy to:

Elizabeth C. Brogan, Counsel for Suzanne E. Wade, Chapter 13 Trustee
Post Office Box 1780
Richmond, Virginia 23218-1780

(X) Attend a hearing, which has been scheduled for **June 21, 2017 at 9:30 a.m. in the United States Bankruptcy Court, 701 E. Broad Street, Courtroom 5100, Richmond, VA 23219 before the Honorable Judge Keith L. Phillips.**

If you or your attorney do not take these steps, the Court may decide that you do not oppose the

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relief sought in the Motion, and may enter an order granting that relief.

Date: May 12, 2017

/s/ Suzanne E. Wade
Chapter 13 Trustee

CERTIFICATE OF SERVICE

I hereby certify a true copy of the foregoing NOTICE OF MOTION TO DISMISS CASE WITH PREJUDICE, AND HEARING THEREON was served electronically or by first-class mail, postage prepaid, this 12th day of May, 2017, upon the following parties:

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/s/ Suzanne E. Wade
Chapter 13 Trustee

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